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Dear Councillor Illingworth

A65 QBI Scheme – Decision Making Process

Your e-mail of 2 August to Andrew Wheeler, the Highway Design and Construction Manager within City Development, has been passed to me for a response. Your e-mail asserts, in summary, that a) the size of the Scheme prevented it from being within the category of Permitted Development and b) officers did not have the power under the officer delegation scheme to decide that an Environmental Impact Assessment was not required in respect of the A65 QBI Scheme. You suggest that these were in fact 'Key Decisions' in accordance with the Council's Constitution, but were not treated as such by officers. As a result, you contend that the decisions have not been properly notified and published on the Forward Plan and the opportunity to call-in these decisions has been denied to Members.

The fundamental problem you raised was that the A65 QBI Scheme is a scheme, which in your words "covers about 10 hectares, affects three or more wards, straddles at least two parliamentary constituencies and involves expenditure of £23m, so it is at least 10 times larger than the maximum permitted size for officer delegation in the Council Procedure Rules".

On a preliminary point, the Constitution does not limit the delegated authority to officers in respect of schemes of a certain size, as you suggest, and, therefore, officers are not prevented from taking Key Decisions on schemes of this magnitude. As currently drafted, the Council's Constitution does allow for officers to take Key Decisions in respect of executive functions and these are subject to the same requirements for publication in the Forward Plan and call-in etc. as apply to the Executive Board. However, the officer in question may decide, where appropriate, to refer the matter to Executive Board for a decision or alternatively, an appropriate Executive Member may direct that the officer should not exercise his/her delegated authority and refer the matter to Executive Board.



However, in this case, the decision to proceed with a scheme of this magnitude was one taken by Executive Board and not by officers. The decisions to which you refer in your e-mail are ones which effectively follow the decision of Executive Board and form part of the process for implementing this Member decision.

The two decisions in question are:-

1. the decision not to make a planning application for the scheme but rather to rely on permitted development rights
2. the formal screening opinion undertaken by officers within Planning Services which concluded that an Environmental Impact Assessment for the development would not be necessary.

In order to properly consider the questions that you have raised it is necessary to view these decisions within the context in which they were taken, the fundamental point to assess being whether these discrete decisions constituted Key Decisions in their own right or whether these were decisions which flowed as a consequence of a broader decision which may have been a Key Decision and effectively embraced these procedural steps.

From my investigation it would appear that in this case the "in principle" decision to progress the A65 QBI scheme was taken by Members, and in particular the decision of the Executive Board on 20 September 2006 was significant in this respect.

The background to that decision is summarised below. The A65 QBI scheme was submitted to the Government as part of the Local Transport Plan 2001-6 submission and provisionally approved by the Government in December 2001. Subsequent discussions with the Department for Transport led to the submission of a revised scheme proposal which was developed to take on board the emerging re-development proposals for the Kirkstall Road corridor and further minimise the need for future land acquisitions.

This revised scheme was remitted for regional advice on transport priorities by the DFT in December 2004 and was subsequently identified as a priority in the Regional Transport Board's submission to the Secretary of State in January 2005. On 6 July 2006 the Secretary of State for Transport announced that the A65 QBI had been granted programme entry into the LTP major schemes programme as part of the first round of Regional Funding Allocation approvals.

A report by the then Director of Development was considered by Executive Board on 20 September 2006. This report updated Members on the current status of the project and sought approval to progress the detailed development of a scheme for the A65 QBI. The report also confirmed that progress would be reported back to the Executive Board at the key stages in the delivery process and that oversight of the scheme would be provided by a project board chaired by the Director of Development (now City Development).

The Executive Board resolved, amongst other things:

“that approval be given to commence the development of the scheme, including detailed design, statutory procedures and procurement planning”.

That decision which effectively approved the progress of the scheme was eligible for call-in but was not called in. This is particularly pertinent to the issues that you have now raised, as this decision of the Executive Board was a Key Decision and was included in the Forward Plan of Key Decisions for September – December 2006.

There has therefore been clear Member involvement in deciding to promote the scheme and the Executive Board authorised both the scheme’s initiation and progression.

Turning to the two officer decisions to which you refer:-

Counsel’s Opinion was sought by officers on the question of whether a planning application should be made in respect of the scheme or whether planning permission had been granted under the provisions of the Town & Country Planning (General Permitted Development Order) 1995. Counsel’s advice confirmed that the scheme did have permission in accordance with the GPDO and confirmed the lawfulness of this approach. The acceptance of that advice should not be confused with the decision to proceed with the scheme taken by the Executive Board “that approval be given to commence the development of the scheme, including detailed design, statutory procedures and procurement planning”. The report considered by Executive Board made reference to the “statutory procedures” and in particular paragraph 5.1 stated:

“As part of the detailed development of the scheme a full evaluation of the necessary statutory requirements will be made. This will review the requirements for planning consent processes needed to acquire any third party land and the Highways and Traffic Orders necessary to construct and implement the scheme”.

Therefore, Executive Board through its Key Decision of 20 September 2006 approved the carrying out of statutory procedures and was aware when doing so that this included, inter alia, requirements relating to the need for planning consent. It follows that the decision not to make a planning application but rather to rely on permitted development rights was a decision that officers were entitled to take in order to implement the earlier Executive Board decision. It is my view that this was not a Key Decision in its own right but was an “Administrative Decision” as it:

- a) Was within an approved budget;
- b) Was not in conflict with the Budget and Policy Framework or other approved policies approved by the Council; and
- c) Did not raise new issues of policy

As a result, the requirements as to publication in the Forward Plan and call-in etc. do not apply.

With regard to the screening opinion in respect of the need for an Environmental Impact Assessment pursuant to part 2 of the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999, that function is part of the process required in determining planning applications made under Section 70 of the Town and Country Planning Act 1990 and is therefore delegated to officers. It is a procedural and technical requirement by which officers must formulate an opinion as to whether in summary there is likely to be substantial environmental harm arising from the development.

The responsibility for conducting EIA screening opinions under the 1999 Regulations lies with the Council in its role as local planning authority. In accordance with the Council's delegation scheme this function is delegated to the Chief Planning Officer and the Area Planning Managers pursuant to a sub-delegation scheme. These officers were therefore acting in accordance with their delegation and were lawfully entitled to take this decision. Again my view remains that this is not a Key Decision. Rather, these are detailed and administrative arrangements taken in order to carry through the Executive Board decisions and should be seen as a direct consequence and part of the implementation of that decision. Therefore they are not Key Decisions in their own right for the purposes of the Council's Constitution.

Even if a contrary view is taken that these decisions did meet the criteria for Key Decisions in accordance with the Council's Constitution, they would fall within the specified exception, namely that they both constitute:

“a decision which is a direct consequence of implementing a previous Key Decision”.
(para. 4.3 of section 5, Part III of the Constitution).

If the Executive Board or the appropriate Executive Member wished to limit the extent of the delegation to officers in respect of implementing this scheme, it could, at any point, take the decision that specific subsequent decisions relating to implementation should be referred up to the Executive Board.

If, in more general terms, it was considered that the extent of officer delegation under the Council's Constitution was too broad, then the Constitution itself would need to be amended and a recommendation would need to be made to the Leader to this effect.

I hope this helps to clarify the position. In the light of your request that the matter is investigated by Scrutiny Board and the forthcoming Scrutiny Board meeting on 18 September, I have copied this letter to Richard Mills for attaching to the Scrutiny Board Report.

Yours sincerely

Caroline Allen
Head of Development & Regulatory